



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Michelle Mack,
Department of the Treasury

Request for Waiver of Repayment of
Salary Overpayment

CSC Docket No. 2019-2618

ISSUED: MAY 9, 2019

(ABR)

Michelle Mack, an Administrative Analyst 3 with the Department of the Treasury, requests a waiver of repayment of a salary overpayment pursuant to *N.J.S.A.* 11A:3-7, which provides that when an employee has erroneously received a salary overpayment, the Civil Service Commission (Commission) may waive repayment based on a review of the case.

By way of background, the appointing authority appointed the appellant to the title of Pensions Benefit Specialist 2 (\$75,900.80, step 10, salary range P21). Subsequently, the appellant filed a request for a classification review with the Division of Agency Services (Agency Services). Agency Services reviewed all documentation supplied and determined that the appropriate title for her position was Administrative Analyst 3, effective November 10, 2018 (\$82,649.50, step 7, salary range P26).

The appellant was notified that as a result of the foregoing, her title and salary were corrected retroactive to November 10, 2018 and that as a result she was entitled to differential pay of \$2,388. However, she was further informed that since her prior title was a "35" title, but her current title was an "NL" (non-limited), she was no longer entitled to overtime payments after November 9, 2018. In this regard, it is noted that employees in "NL" titles are not normally eligible for cash compensation for overtime. *See N.J.A.C.* 4A:3-5.3, 5.6 and 5.7. Therefore, she was told that she would have to repay the \$4,065.76 she had received for overtime. The appointing authority indicated that it would collect this amount by deducting

\$312.75 from each paycheck for the 13 pay periods ending between April 12, 2019 and September 27, 2019.

On appeal, the appellant states that she was unaware that employees in the Administrative Analyst 3 title are generally not entitled to overtime compensation and that prevailing in her classification review would require her to remit payment for overtime compensation she earned during the pendency of her classification review. She maintains that having to repay this compensation will cause her financial hardship, as she is a single parent and the sole provider in her household. Specifically, she contends that her take-home pay during the five-month repayment period will be approximately \$300 less than it was when she served as a Pensions Benefit Specialist 2. The appellant indicates that she is willing to delay the effective date of her reclassification to February 2, 2019 in an effort to eliminate the need to repay the appointing authority.

In response, the appointing authority maintains that while it did not err in compensating the appellant for overtime between November 10, 2018 and February 2, 2018, she meets the requirements for a waiver of repayment, as set forth in *N.J.A.C.* 4A:3-4.21(a), because she was unaware that the workweek for the Administrative Analyst 3 title would preclude her entitlement to overtime compensation during the period at issue and because of the financial hardship that the repayment would cause. Accordingly, it supports the appellant's request to delay the effective date of the reclassification determination to February 2, 2019.

CONCLUSION

N.J.A.C. 4A:3-4.21 Salary overpayments: State service, provides as follows:

- (a) The [Commission] may waive, in whole or in part, the repayment of an erroneous salary overpayment, or may adjust the repayment schedule based on consideration of the following factors:
 1. The circumstances and amount of the overpayment were such that an employee could reasonably have been unaware of the error;
 2. The overpayment resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status;
 3. The terms of the repayment schedule would result in economic hardship to the employee.

It is well settled that all of the factors outlined in *N.J.A.C. 4A:3-4.21* must be satisfied to successfully obtain a waiver of the repayment obligation. Thus, in *In the Matter of Thomas Micai v. Commissioner of Department of Personnel, State of New Jersey*, Docket No. A-5053-91T5 (App. Div., July 15, 1993), the Superior Court of New Jersey, Appellate Division, affirmed the Commissioner of Personnel's decision to deny a request for waiver of repayment of salary overpayment, finding that, although the appellant had established that the overpayment was the result of an administrative error, he failed to show that enforcement of the repayment would create economic hardship.

The appellant requests a waiver of the salary overpayment since she claims that she was not aware that prevailing in her classification appeal could require her to remit payment for overtime compensation she received during the pendency of her classification review. The rule provides that an overpayment that resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status, may be waived. See *N.J.A.C. 4A:3-4.21(a)2*. However, the overpayment in the instant matter was not due to any specific administrative error in this matter.

Moreover, although the appellant asserts that the repayment amount will result in economic hardship to her, she has not provided any specific information about her economic situation. See *In the Matter of Ruth Samonski* (Commissioner of Personnel, decided July 5, 2005) (Waiver of repayment of a salary overpayment in the amount of \$20,568.40 for improperly receiving SLI benefits denied, where the appellant failed to provide any information to establish that the repayment would cause an economic hardship). Compare, *In the Matter of Betty Munoz* (Commissioner of Personnel, decided March 16, 2000) (Waiver of repayment of a salary overpayment that represented 3.9% of the gross salary of an employee who was a single parent with two children granted); *In the Matter of Peter Spencer* (Commissioner of Personnel, decided December 13, 1996) (Waiver of salary overpayment granted since repayment would cause an economic hardship based on employee's level of compensation). Additionally, although the repayment amount in this matter is \$4,065.76, she has already received \$2,388 for differential pay, leaving a difference of \$1,677.76. Further, other than her mere statement that the repayment will create a hardship, she has failed to provide any specific information. Regardless, the appointing authority and the appellant may reasonably adjust her schedule for repayment of the \$4,065.76 in order to lessen any hardship resulting from this obligation.

ORDER

Therefore, it is ordered that this request for a waiver of the repayment of the salary overpayment by Michelle Mack, be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 9TH DAY OF MAY, 2019



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